

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:18-cv-24227-CMA

JASON MILLER,

Plaintiff,

v.

GIZMODO MEDIA GROUP, LLC,
a Delaware Corporation, KATHERINE
KRUEGER, individually, and
WILL MENAKER, individually,

Defendants.

**PLAINTIFF'S MOTION FOR LEAVE TO SUPPLEMENT REPLY TO
DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT ON FALSITY [DOC. 174]**

Plaintiff, Jason Miller, by counsel and pursuant to Local Rule 7.1(c), respectfully moves for leave of Court to supplement his Reply to Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment on Falsity [Doc. 174] with (1) recently-produced messages between Arlene Delgado and Yashar Ali and (2) Gizmodo Defendants' August 9, 2019 Trial Witness List (which does not include Yashar Ali). In support, Miller states as follows:

Introduction

On August 7, 2019, Arlene Delgado ("Delgado") produced a string of 931 text messages between herself and Yashar Ali ("Ali"), spanning from April 18, 2018 through October 16, 2018. These message are responsive to a subpoena for documents Miller served on Delgado in late 2018.

On June 27, 2019, Miller moved for summary judgment on falsity. [Doc. 152] Gizmodo Defendants opposed Miller's motion based primarily on hearsay statements by Ali [Doc. 169 pp. 3-4, 6-7; Doc. 170 ¶ 7-8, 10] Miller objected to Ali's hearsay statements [Doc. 174 pp. 7, 9-10], and pointed out that Gizmodo Defendants were relying on Delgado's and Ali's hearsay without disclosing the known evidence of Delgado accusing Ali of "lying" about and "making up" his confirmation of the Jane Doe rumor, other messages in which Ali confirmed to Delgado that details of the Jane Doe rumor were not true, and messages between Jane Doe and Ali, Jordan Bloom and Delgado in which Doe confirmed the rumor is not true. [Doc. 175 ¶ 5, Ex. 1, 6; ¶ 7, Ex. 7-8]

In late 2018, Miller served a subpoena for documents on Delgado seeking, among other things, all messages between Delgado and Ali relating to Jason Miller. On December 18, 2018, Delgado objected to Miller's subpoena [Doc. 47], following which Miller sought court intervention [Doc. 78]. Thereafter, counsel appeared for Delgado who, on March 12, 2019, served an Amended Response to Subpoena Duces Tecum [Doc. 88]. On March 20, 2019, Delgado produced screenshots of a few messages between her and Ali [Delgado_003-007; attached as **Exhibit 1**]. After Miller's counsel expressed concern responsive documents were being withheld, Delgado produced some additional call logs with Ali but no additional messages. On May 28, 2019 and June 4, 2019, Delgado was deposed. Delgado did not produce additional messages with Ali at her deposition.

On August 7, 2019, Delgado's counsel *sua sponte* produced 931 messages between Delgado and Ali spanning six months. These newly-produced messages directly relate to the

Jane Doe rumor, Ali's supposed investigation, and Ali's September 22, 2018 tweet. The explanation for Delgado's belated production was that the messages were "on some app" to which Delgado lost access until recently. (See **Exhibit 2**)

I. Basis for Relief

Under Local Rule 7.1(c), parties can be permitted to supplement prior filings with newly-discovered evidence that was not available at the time they filed their original brief. *Girard v. Aztec RV Resort, Inc.*, 2011 U.S. Dist. LEXIS 105855, at *2 (S.D. Fla. Sept. 16, 2011). Supplemental filings should note the argument to which the newly-discovered evidence relates, but should not make legal argument. *Id.*

II. Argument/Evidence to Which the New Delgado/Ali Messages Relate

The messages between Delgado and Ali relate to the falsity of the Jane Doe rumor and arguments Gizmodo Defendants raised in opposition to Miller's motion for summary judgment [Doc. 169 pp. 3-4, 6-7; Doc. 170 ¶¶ 7-8, 10], as well as Miller's Objection and Reply thereto [Doc. 174 pp. 7, 9-10; Doc. 175 ¶¶ 5, 7-8]:

1. Gentleman A: Unbeknownst to Miller until Delgado recently produced the messages, Ali actually reached out to Gentleman A about the Jane Doe rumor on July 12, 2018, and confirmed it was baseless [Delgado 117-123; attached as **Exhibit 3**]:

Received - Yashar - July 12, 2018 at 8:29 PM - (iMessage)

FYI from the gop fighter guy

There's nothing solid. It's a dead end, maybe even office gossip.
Sorry I can't be of assistance, good luck

2. Jane Doe Never Lived in Orlando: Consistent with Jane Doe's Declaration, which states that she spoke to Ali on August 6, 2018 and told him the rumor was not true, and states that she never lived in Orlando [see Doc. 5-1], Ali messaged Delgado on August 6, 2018 and stated:

Received - Yashar - August 6, 2018 at 6:29 PM - (iMessage)



Here's the challenge - [REDACTED] has never lived in Orlando- she's always been in the west palm beach area - where there is a Rachel's

[Delgado 156-159; attached as **Exhibit 4**] Notably, Delgado's March 20, 2019 production included a screenshot of a portion of this message string, but not the above message confirming Jane Doe never lived in Orlando. [See Ex. 1 at Delgado_006-07]

3. Refusal to Publish: The newly-produced messages also discuss why Ali never published and Ali's confirmation that he did not have enough evidence to support the story:

Received - Yashar - August 7, 2018 at 6:20 PM - (iMessage)



Since I don't have what the lawyers need from her - we need to give him more time. Will check with lawyers for how much time - I'm also texting him in an hour telling him that I need to talk to him

Received - Yashar - August 8, 2018 at 9:23 PM - (iMessage)



AJ, I have been threatened by everyone from Bolling, to Guilfoyle's lawyers, to the worst of the worst, The Church of Scientology. I have never backed down and never will. I have never in my career ever buried a story and never will - My reporting took down the entire miss America board - entertainment executives, I've written tough stories on people like Ari Emanuel who is arguably in the top ten most powerful men in all of media. I'm very hurt that you would think I would bury a story, this sort of story is career making. If I could report it, I would. I am continuing to work on it, but it's just not reportable yet. Re god like standard, the Bolling story had over a dozen sources, some of those sources I knew for years. The Guilfoyle story had over 20 sources, again people whom I knew for years. It also took me over 3 months to lock down the bolling story. The Guilfoyle story I was working on for a year. I don't have 20 sources for this story, I don't even have 10.

Received - Yashar - August 8, 2018 at 9:31 PM - (iMessage)



I can tell you definitively he made no threats nor did he promise anything. The biggest way for me to get pissed and dig in further is for subjects to threaten me. I would have taken to twitter at a minimum as I did with Guilfoyle two weeks ago and others in the past.

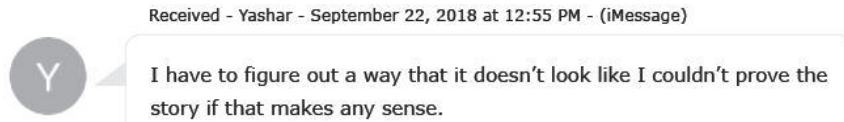
Received - Yashar - August 9, 2018 at 2:32 PM - (iMessage)



Sorry for the delay, you won't be able to find any reporter at a major publication that doesn't submit questions for a story like this. Lawyers require it, I'm happy to show you proof that Harvey Weinstein, Bill O'Reilly and others received written detailed questions. For example, Kimberly received them for her story, 17 detailed questions. Again, I will prove it to you. For the New York Times investigation into bill o'reilly they were talking to his lawyer for 9 months straight. They repeatedly submitted questions over and over again.

[Delgado 164-172; attached as **Exhibit 5**]

4. Ali's September 22, 2018 Tweet: After the Article was published and Miller posted his Tweet on September 22, 2018 denying the accusations, Delgado pressured Ali to publicly respond – resulting in Ali's September 22, 2018 Tweet upon which Gizmodo Defendants rely in opposing summary judgment, which Delgado said “isn't saying much,” prompting Ali to say:



[Delgado 210-212; attached as **Exhibit 6**]

Miller also seeks to supplement his hearsay objection to Gizmodo Defendants' Counterstatement of Facts [Doc. 175 ¶ 2] with Gizmodo Defendants' August 9, 2019 Trial Witness List (attached as **Exhibit 7**), which does not list Ali as a trial witness.

III. Requested Relief

Based on the foregoing, Miller respectfully requests leave to supplement Section III.D of his Reply [Doc. 174 p. 9] and Paragraphs 5 and 7 of his Objection [Doc. 175] with Ali and Delgado's messages attached hereto as Exhibit 3-6 and Gizmodo Defendants' August 9, 2019 Witness List attached hereto as Exhibit 7.

LOCAL RULE 7.1(a)(3) CERTIFICATION

In accordance with S.D. Fla. L.R. 7.1(a)(3), Plaintiff's counsel conferred with Defendants' counsel on August 7, 2019, and Defendants have not responded. Given the time-sensitive nature of this motion due to pending summary judgment motions, Miller will update this certificate once Gizmodo Defendants respond.

Dated: August 12, 2019.

Respectfully submitted,

/s/ Shane B. Vogt

Kenneth G. Turkel – FBN 867233

E-mail: kturkel@bajocuva.com

Shane B. Vogt – FBN 257620

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Attorneys for Plaintiff

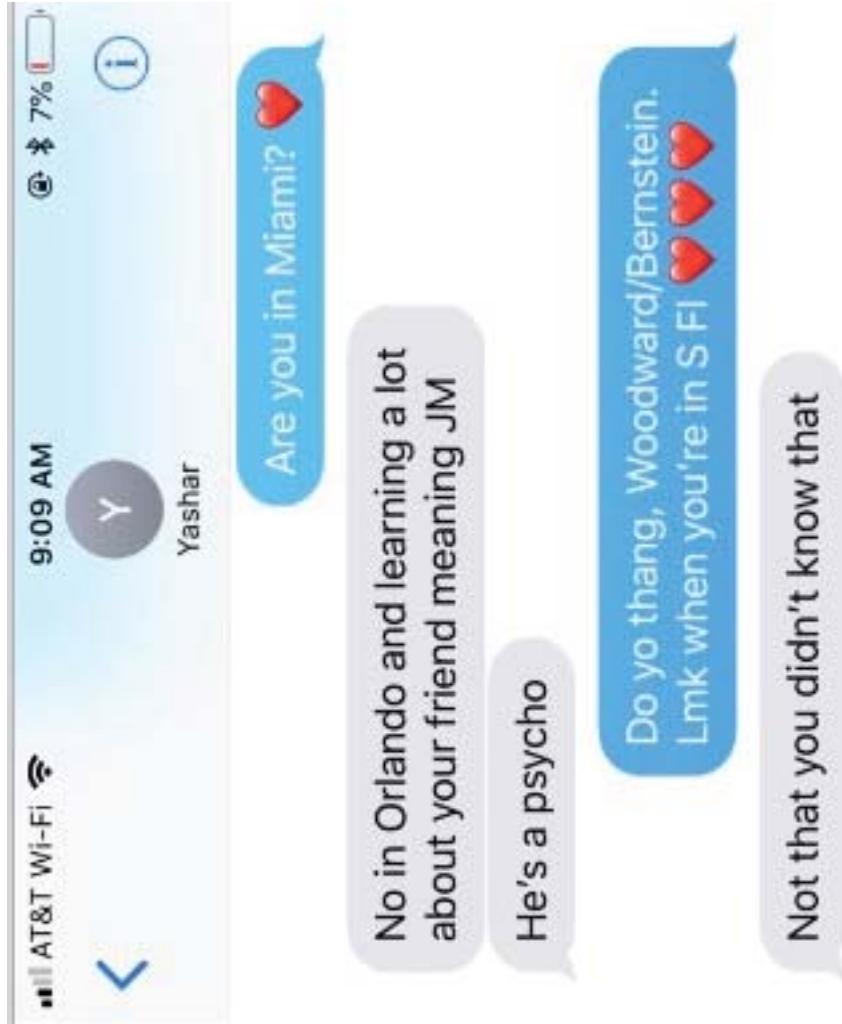
CERTIFICATE OF SERVICE

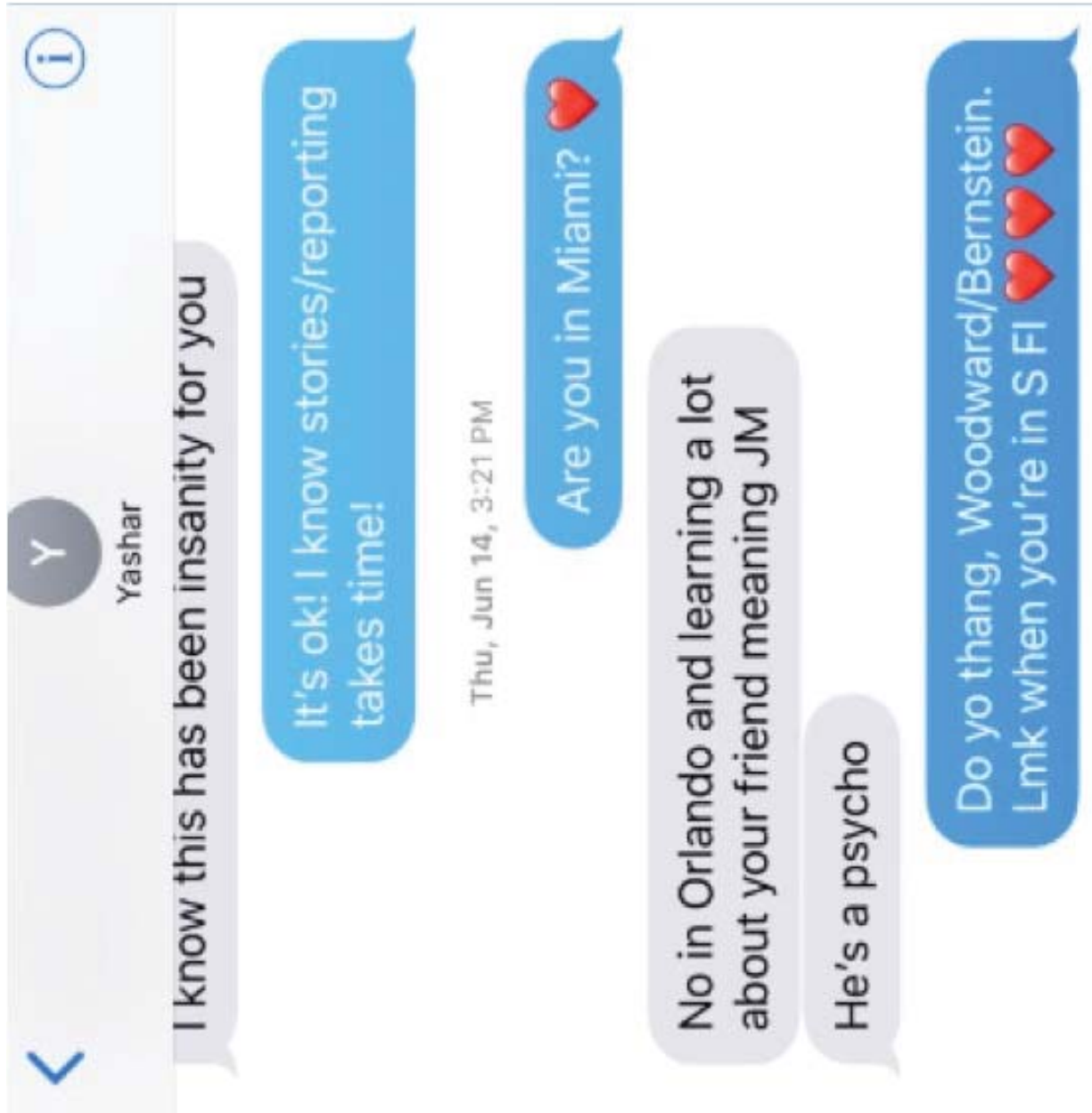
I HEREBY CERTIFY that on August 12, 2019, the foregoing document was filed with the Court's CM/ECF system, which will send electronic notice to all counsel of record.

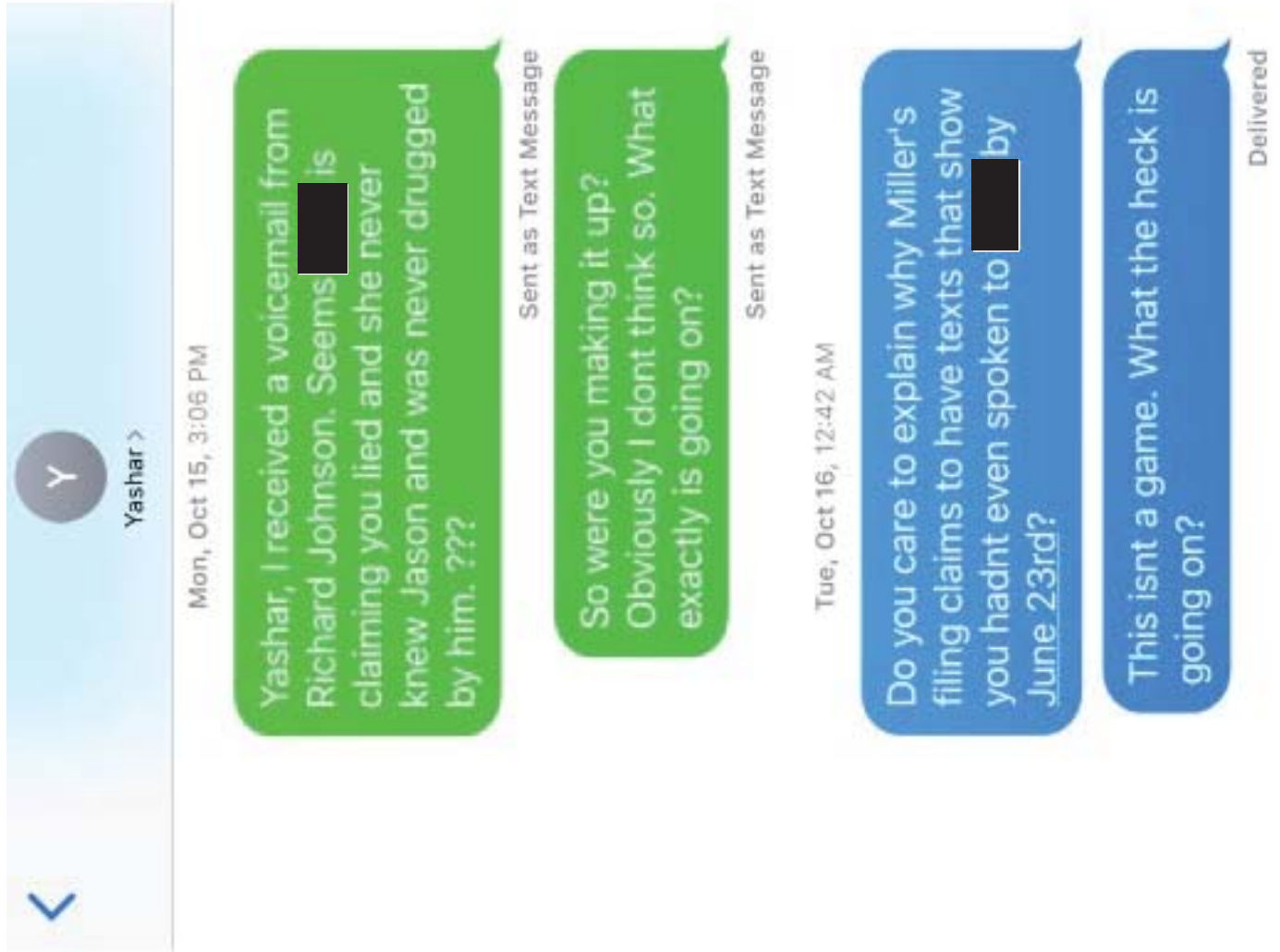
/s/ Shane B. Vogt

Attorney

EXHIBIT 1







To: Yashar

Mon, Aug 6, 6:13 PM

Did Jason talk about working in Orlando with you?

Yes! I distinctly recall bc he said how he loved Orlando and I was saying "Orlando???" (Ppl usually dont think much of Orlando)

I got the impression he had a little too much partying there. That was the vibe he gave off. I think he also mentioned renting a house somewhere in orlando and that he really liked the house

I am not positive re the house thing but i have a vague recollection of him having a house rental

Delgado_006

To: Yashar

First tweet said teachers in Orlando

yeah but remember he doesn't know. - he's hearing the story second hand

One thing I haven't locked down yet is was it Rachel's Orlando or west palm beach

I'll explain why - when I had that quick talk with [REDACTED] two months ago - we didn't talk about those nitty gritty things

Right but Jason was working in orlando, not west palm. The story he repeatedly heard was about orlando



GOP Fighter @GopFighter · 9h
Replying to @JasonMillerinDC
Jason I'm praying for you

Praying all the weird nasty shit you've done and all the unethical immoral deals you make come to light. You deserve

Delgado_007

EXHIBIT 2

Shane Vogt

From: Matthew Sarelson <msarelson@kymplaw.com>
Sent: Wednesday, August 07, 2019 7:57 PM
To: Shane Vogt
Subject: Re: production

I received them today.

My understanding is that these messages were on some app (I don't recall the name but it came up during her deposition, something like a snapchat but not snapchat). She lost access to that the app until recently.

I totally understand your frustration receiving them today.

-Matthew



MATTHEW SETH SARELSON, Esq
PARTNER

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 LinkedIn Skype Twitter

On Wed, Aug 7, 2019 at 7:40 PM Shane Vogt <shane.vogt@bajocuva.com> wrote:

What's the deal? These are clearly responsive—the full message string with Ali, small parts of which she screenshotted and produced before. What is her reason for just turning these over to you today?

From: Matthew Sarelson [<mailto:msarelson@kymplaw.com>]
Sent: Wednesday, August 07, 2019 6:32 PM
To: Shane Vogt; Ken Turkel; Cc: Deanna Shullman; Lisa Meriwether; Gayla Arnold; Bolger Kate; McNamara, Elizabeth; Matthew Sarelson
Subject: Re: production

All --




This is the third and final email transmitting material. Attached are additional messages between my client and Yashar Ali. They could be responsive to the earlier subpoena. All of this material (the documents attached to the three emails) were turned over to me today, so I am turning them all over to you.

Yashar Messages.pdf

Thank you, Matthew



MATTHEW SETH SARELSON, Esq
PARTNER

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 *LinkedIn*  *Skype*  *Twitter*

On Wed, Aug 7, 2019 at 6:28 PM Matthew Sarelson <msarelson@kymplaw.com> wrote:

Dear All --

Attached are four voicemail messages left by Mr. Miller on my client's cell phone. I have not listened to them. I am merely transmitting them to all parties to this litigation in the event they are responsive to the earlier subpoena.

Thank you, Matthew



MATTHEW SETH SARELSON, Esq
PARTNER




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 *LinkedIn*  *Skype*  *Twitter*

EXHIBIT 3

7/11/18

Sent - July 11, 2018 at 12:30 AM - (iMessage) - Delivered

Btw youre not backing out, yes? PLEASE don't back out. It's critical, on so many levels, that the truth come out. 🙏🙏🙏

Received - Yashar - July 11, 2018 at 12:32 AM - (iMessage)

Y

Back out?!!

Received - Yashar - July 11, 2018 at 12:32 AM - (iMessage)

Y

What?!

Received - Yashar - July 11, 2018 at 12:32 AM - (iMessage)

Y

What gave you that impression

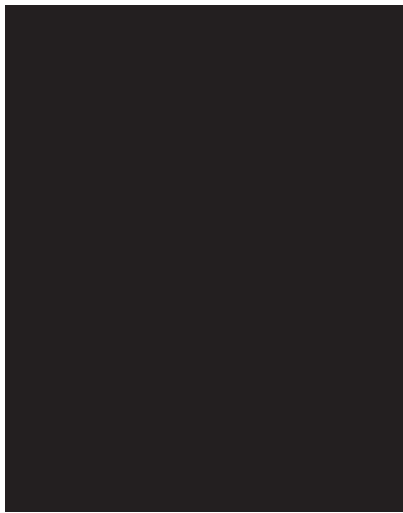
Sent - July 11, 2018 at 12:32 AM - (iMessage) - Delivered

Just worried!

Sent - July 11, 2018 at 12:32 AM - (iMessage) - Delivered

ok, phew

Sent - July 11, 2018 at 12:34 AM - (iMessage) - Delivered



Sent - July 11, 2018 at 12:36 AM - (iMessage) - Delivered

Btw, that is the first page of the Mediation Agrmt (so you dont think I am exaggerating re the need for the report to come out before friday). He would have Will on Friday and an overnight (!!!!) on Sat. Will isnt safe. But i cant say why Will isnt safe until report is out (to not ruin it). Anyway talk tmrw 😊

Sent - July 11, 2018 at 9:37 AM - (iMessage) - Delivered

I am forced to respond to Miller's message on OFW about this weekend (court order requires us to respond) and it took ALL My STRENGTH to not mention the Orlando past as the reason why I am concerned for my safety. Dont want to tip him off. Pls pls pls do all you can to get this story up asap! Will's safety depends on it!! 🙏💙🙏

Sent - July 11, 2018 at 9:44 AM - (iMessage) - Delivered

Also pls feel free to give either women my number and tell them to pls reach out to me if they can. I hope they will help me defend Will. He is an innocent baby and needs their help/their truth

Received - Yashar - July 11, 2018 at 11:51 AM - (iMessage)

Y

I want a pet baby elephant.

Sent - July 11, 2018 at 11:52 AM - (iMessage) - Delivered

Has she responded? I am literally ill waiting around. (Not pressuring you — just ill bc of Will's safety and the Friday timesharing being 49 hours away)

Sent - July 11, 2018 at 11:52 AM - (iMessage) - Delivered

I do, too — I want to foster one from that organization of yours!

Sent - July 11, 2018 at 1:05 PM - (iMessage) - Delivered

In car driving to see atty, call me if any update

Received - Yashar - July 11, 2018 at 1:11 PM - (iMessage)

Y

None yet. Going to call you in a couple hours to chat

Sent - July 11, 2018 at 1:12 PM - (iMessage) - Delivered

Anything bad?!

Sent - July 11, 2018 at 1:13 PM - (iMessage) - Delivered

Ive become a nervous, jittery chick

Received - Yashar - July 11, 2018 at 1:17 PM - (iMessage)

Y

Nothing bad

Sent - July 11, 2018 at 1:17 PM - (iMessage) - Delivered

Has "Clearwater" piped up?

Received - Yashar - July 11, 2018 at 3:23 PM - (iMessage)

Y

You will get it but if I end up having a stroke it helps no one. It's a lot of pressure to be told that a 1 year old child's safety is in your hands as I have been told. It's not fair. I'm doing my best.

7/12/18

Sent - July 12, 2018 at 10:18 AM - (iMessage) - Delivered

I know youre doing your best. But this has been investigated for over six weeks; you said you had all you needed; and yet the can keeps being kicked down the curb. is there ANY movt/progression or should i assume the story wont be done, after all this? 🙄

Received - Yashar - July 12, 2018 at 12:56 PM - (iMessage)

Y

I would like for you to speak to someone for me. You don't need to tell them anything confidential. Just hear what they have to say

Sent - July 12, 2018 at 12:56 PM - (iMessage) - Delivered

??

Sent - July 12, 2018 at 12:57 PM - (iMessage) - Delivered

Who? About what?

Sent - July 12, 2018 at 12:57 PM - (iMessage) - Delivered

And what is happening w the story?

Sent - July 12, 2018 at 1:02 PM - (iMessage) - Delivered

Hello?

Sent - July 12, 2018 at 1:09 PM - (iMessage) - Delivered

Yashar, pls answer.

Received - Yashar - July 12, 2018 at 1:13 PM - (iMessage)

Y

There is no issue with the story. I'm out of the shower wet and naked. Please give me a few mins to dry off

Received - Yashar - July 12, 2018 at 1:13 PM - (iMessage)

Y

And put on clothes

Received - Yashar - July 12, 2018 at 1:13 PM - (iMessage)

Y

And I will call you

Sent - July 12, 2018 at 1:13 PM - (iMessage) - Delivered

Lol ok sexy!

Received - Yashar - July 12, 2018 at 1:13 PM - (iMessage)

Y

God hot and spicy Cubana!!! 🍑🍑🔥

Sent - July 12, 2018 at 1:13 PM - (iMessage) - Delivered

I have a telephonic hearing w the court in 2 min

Sent - July 12, 2018 at 1:13 PM - (iMessage) - Delivered

So will call you after!

Received - Yashar - July 12, 2018 at 1:55 PM - (iMessage)

Y

On phone - will call you as soon as I get off

Received - Yashar - July 12, 2018 at 1:56 PM - (iMessage)

Y

Also I want to talk to your mom to learn how the hell her daughter got so spicy

Received - Yashar - July 12, 2018 at 1:56 PM - (iMessage)

Y

My god

Sent - July 12, 2018 at 1:59 PM - (iMessage) - Delivered

I just finished the hearing. They gave Monster the overnight w Will.

Received - Yashar - July 12, 2018 at 1:59 PM - (iMessage)

Y

I'm so sorry

Received - Yashar - July 12, 2018 at 1:59 PM - (iMessage)

Y

I'm off the phone in about 10 mins

Received - Yashar - July 12, 2018 at 2:15 PM - (iMessage)

Y

Calling you in two mins

Sent - July 12, 2018 at 2:18 PM - (iMessage) - Delivered

Standing by

Received - Yashar - July 12, 2018 at 2:41 PM - (iMessage)

Y

What's his actual name again?

Sent - July 12, 2018 at 2:41 PM - (iMessage) - Delivered

I didnt get it — I purposely didnt want him to give it to me so he could stay anonymous

Sent - July 12, 2018 at 2:41 PM - (iMessage) - Delivered

But we have friends in common

Received - Yashar - July 12, 2018 at 2:46 PM - (iMessage)

Y

I've reached out to him on both platforms

Sent - July 12, 2018 at 2:46 PM - (iMessage) - Delivered

Ok great

Sent - July 12, 2018 at 2:46 PM - (iMessage) - Delivered

Were you able to get a hold of her

Received - Yashar - July 12, 2018 at 2:48 PM - (iMessage)

Y

Not yet but working on it.

Received - Yashar - July 12, 2018 at 2:48 PM - (iMessage)

Y

Calling other folks now

Received - Yashar - July 12, 2018 at 8:29 PM - (iMessage)

Y

FYI from the gop fighter guy

There's nothing solid. It's a dead end, maybe even office gossip.
Sorry I can't be of assistance, good luck

Received - Yashar - July 12, 2018 at 8:48 PM - (iMessage)

Y

For what its worth, this is typical.

Received - Yashar - July 12, 2018 at 9:18 PM - (iMessage)

Y

Like I said. Typical. All set to talk to him tomorrow now. Please keep between us

Sent - July 12, 2018 at 9:30 PM - (iMessage) - Delivered

But he isnt relevant. He was just the person that had heard it. You already spoke to [REDACTED] and confirmed it w her. Am confused.

Sent - July 12, 2018 at 9:30 PM - (iMessage) - Delivered

EXHIBIT 4

Received - Yashar - August 6, 2018 at 5:43 AM - (SMS)

Y



Received - Yashar - August 6, 2018 at 7:20 AM - (iMessage)

Y

Good Morning, I wanted to let you know I'll be reaching out to Jason tomorrow for comment.

Received - Yashar - August 6, 2018 at 7:20 AM - (iMessage)

Y

Got the go ahead from my editor.

Received - Yashar - August 6, 2018 at 7:20 AM - (iMessage)

Y

Let's discuss Peter when you have a moment.

Received - Yashar - August 6, 2018 at 7:39 AM - (iMessage)

Y

Just be prepared for a wall of shit tomorrow.

Received - Yashar - August 6, 2018 at 6:13 PM - (iMessage)

Y

Did Jason talk about working in Orlando with you?

Sent - August 6, 2018 at 6:15 PM - (iMessage) - Delivered

Yes! I distinctly recall bc he said how he loved Orlando and I was saying "Orlando???" (Ppl usually dont think much of Orlando)

Sent - August 6, 2018 at 6:16 PM - (iMessage) - Delivered

I got the impression he had a little too much partying there. That was the vibe he gave off. I think he also mentioned renting a house somewhere in orlando and that he really liked the house

Sent - August 6, 2018 at 6:18 PM - (iMessage) - Delivered

I am not positive re the house thing but i have a vague recollection of him having a house rental

Sent - August 6, 2018 at 6:20 PM - (iMessage) - Delivered

Also, did the lobbyist guy tell you how Jason (clearly it was him) reported his tweet to Jason ("Do you remember [REDACTED] from Rachel's?" to Twitter) Gee, why would you think anything of it if youre innocent?

Received - Yashar - August 6, 2018 at 6:22 PM - (iMessage)

Y

So how do we know it wasn't the Rachel's in West Palm Beach?

Sent - August 6, 2018 at 6:22 PM - (iMessage) - Delivered

What do you mean?

Sent - August 6, 2018 at 6:23 PM - (iMessage) - Delivered

His tweet said Rachel's in Orlando

Received - Yashar - August 6, 2018 at 6:23 PM - (iMessage)

Y

yeah but remember he doesn't know. - he's hearing the story second hand

Received - Yashar - August 6, 2018 at 6:23 PM - (iMessage)

Y

One thing I haven't locked down yet is was it Rachel's Orlando or west palm beach

Received - Yashar - August 6, 2018 at 6:23 PM - (iMessage)

Y

Ill explain why - when I had that quick talk with [REDACTED] two months ago
- we didn't talk about those nitty gritty things

Sent - August 6, 2018 at 6:24 PM - (iMessage) - Delivered

Right but jason was working in orlando, not west palm. The story he repeatedly heard was about orlando

Sent - August 6, 2018 at 6:26 PM - (iMessage) - Delivered



Sent - August 6, 2018 at 6:26 PM - (iMessage) - Delivered

Those are the tweets, which Jason then went through the trouble of reporting his tweet to Twitter (and specifically only one tweet - the one about Rachel's in Orlando)

Received - Yashar - August 6, 2018 at 6:27 PM - (iMessage)

Y

Why is [REDACTED] in quotes?

Sent - August 6, 2018 at 6:28 PM - (iMessage) - Delivered

Just meant to be snark, it seems. Also most strippers use fake names. Turns out she didnt but most do. Tiffany, etc

Received - Yashar - August 6, 2018 at 6:28 PM - (iMessage)

Y

totally.

Received - Yashar - August 6, 2018 at 6:29 PM - (iMessage)

Y

Tiffany LMAO

Received - Yashar - August 6, 2018 at 6:29 PM - (iMessage)

Y

I'm dying

Received - Yashar - August 6, 2018 at 6:29 PM - (iMessage)

Y

Here's the challenge - [REDACTED] has never lived in Orlando- she's always been in the west palm beach area - where there is a Rachel's

Sent - August 6, 2018 at 6:29 PM - (iMessage) - Delivered

She couldve been doing a stint in orlando

Received - Yashar - August 6, 2018 at 6:52 PM - (iMessage)

Y

Baby yashar



EXHIBIT 5

Received - Yashar - August 7, 2018 at 5:46 PM - (iMessage)



Great

Sent - August 7, 2018 at 6:14 PM - (iMessage) - Delivered

Quick question: If miller is reached out to for comment at 5, what time is publication? Bc if he has more than a few hours, he will have time to have a hit piece done on me first (which is exactly what he will do to turn this on me) I am guessing the article is going up tonight or in the morning? (When Page Six did their hit piece on me, they contacted me on a holiday-Monday w only a few hours to comment b4 publication. Guessing this is the same. I just want to avoid a situation where he has a chance to victimize me again)

Received - Yashar - August 7, 2018 at 6:20 PM - (iMessage)



Since I don't have what the lawyers need from her - we need to give him more time. Will check with lawyers for how much time - I'm also texting him in an hour telling him that I need to talk to him

Received - Yashar - August 7, 2018 at 6:20 PM - (iMessage)



And he's been told if any parts of the story leak out, we will hit publish immediately

Received - Yashar - August 7, 2018 at 8:06 PM - (iMessage)



<https://twitter.com/kylegriffin1/status/1026981350484500480>

Received - Yashar - August 7, 2018 at 9:59 PM - (iMessage)



How do you want me to handle it if Jason says "did AJ tell you this"

8/8/18

Sent - August 8, 2018 at 2:33 AM - (iMessage) - Delivered

Youre a journalist so you have ZERO obligation to tell him who your

source/sources are

Sent - August 8, 2018 at 2:34 AM - (iMessage) - Delivered

In fact, exactly the same thing Page Six did to me when he had them do the hit piece on me. That is exactly what I was told.

Received - Yashar - August 8, 2018 at 2:35 AM - (iMessage)

Y

Well I know I don't AJ! I was wondering what your position is on this generally

Received - Yashar - August 8, 2018 at 2:36 AM - (iMessage)

Y

Personally I think you shouldn't claim credit

Sent - August 8, 2018 at 2:36 AM - (iMessage) - Delivered

Agreed

Received - Yashar - August 8, 2018 at 2:37 AM - (iMessage)

Y

Will text u after I talk to him in am

Received - Yashar - August 8, 2018 at 2:37 AM - (iMessage)

Y

Lawyers will be joining Me for call

Sent - August 8, 2018 at 2:37 AM - (iMessage) - Delivered

Thx

Sent - August 8, 2018 at 2:38 AM - (iMessage) - Delivered

More baby yashar pics needed

Sent - August 8, 2018 at 2:51 AM - (iMessage) - Delivered

So is "brace yourself" day tmrw? I was ready tmrw w relatives here even, lol

Sent - August 8, 2018 at 2:51 AM - (iMessage) - Delivered

I will ask my sister to come over again!

Received - Yashar - August 8, 2018 at 2:55 AM - (iMessage)

Y

Lets see what he says in AM. Don't worry the bracing is coming. He could make things worse for himself tomorrow. He called me three times tonight but lawyers told me I'm not allowed to speak to him without them listening in.

Received - Yashar - August 8, 2018 at 2:55 AM - (iMessage)

Y

please keep that between us per usual.

Sent - August 8, 2018 at 12:18 PM - (iMessage) - Delivered

Any update?

Received - Yashar - August 8, 2018 at 12:20 PM - (iMessage)

Y

Waiting for the lawyers to wrap up their conference call then we are calling him. Will text you as soon as we're on the phone with him.

Received - Yashar - August 8, 2018 at 12:20 PM - (iMessage)

Y

assuming you haven't heard from him?

Sent - August 8, 2018 at 12:21 PM - (iMessage) - Delivered

Silence but I 100 percent expected that

Sent - August 8, 2018 at 12:21 PM - (iMessage) - Delivered

Just know he will lie, push back, attempt to charm you/cajole you into

dropping, and do anything and everything to get you not to write this

Sent - August 8, 2018 at 12:22 PM - (iMessage) - Delivered

He is used to being unaccountable and having it both ways

Sent - August 8, 2018 at 12:25 PM - (iMessage) - Delivered

I have literally begged reporters not to write hit pieces on me ("i am a single mother caring for an infant, have some mercy") and the response, perhaps rightly so from a journalistic standpoint is, "that's too bad, i will send you a link when the story is up"

Received - Yashar - August 8, 2018 at 12:30 PM - (iMessage)

Y

Oh I know

Received - Yashar - August 8, 2018 at 12:30 PM - (iMessage)

Y

But as the lawyers said it's his initial reaction that matters

Received - Yashar - August 8, 2018 at 12:30 PM - (iMessage)

Y

Does he pause? Does he say "come on man don't do this to me" etc

Sent - August 8, 2018 at 12:31 PM - (iMessage) - Delivered

You're not getting his initial reaction, though — he has had almost 24 hours to consider what to say. Am sure his initial reaction was to punch everything in his office

Sent - August 8, 2018 at 12:32 PM - (iMessage) - Delivered

I have him blocked on twitter but am told he hasn't even tweeted all evening/day, which means he has been freaking out

Sent - August 8, 2018 at 12:33 PM - (iMessage) - Delivered

He cant deny it so if Im him I go with "hm, i was in a bad place in my life and have changed" or some bullshit spin like that. It's really his only option

Received - Yashar - August 8, 2018 at 2:00 PM - (iMessage)

Y

Fyi we are calling him in 20 mins

Sent - August 8, 2018 at 3:27 PM - (iMessage) - Delivered

Is there a publication time yet? Just so I am ready for any BS

Sent - August 8, 2018 at 6:05 PM - (iMessage) - Delivered

Hola?

Received - Yashar - August 8, 2018 at 6:43 PM - (iMessage)

Y

Calling you in 15 mins!

Sent - August 8, 2018 at 6:46 PM - (iMessage) - Delivered

Any way you can message instead? Only bc Will is on top of me sleeping and if I move him / talk on phone he wakes! 😊

Received - Yashar - August 8, 2018 at 6:46 PM - (iMessage)

Y

No worries, give me 2 minutes to get to my laptop!

Sent - August 8, 2018 at 8:01 PM - (iMessage) - Delivered

Read your texts above from the past few days. It went from assuring the matter would be written, multiple times, to now... after he convinces you, nothing. After nearly 3 months of waiting. Frankly, this is cruel.

Sent - August 8, 2018 at 8:03 PM - (iMessage) - Delivered

Youre sitting on a story about a predator. It is awful.

Sent - August 8, 2018 at 8:40 PM - (iMessage) - Delivered

It is obvious Jason paid her off weeks ago and she has kept you teased w bits here and there to get paid more.

Sent - August 8, 2018 at 8:42 PM - (iMessage) - Delivered

And i dont know what "magic" he pulled that just bc he 'denied' it (which obv he would) suddenly you are not writing a story that you yourself ALREADY confirmed weeks ago straight from the horse's mouth. Fact: you spoke to her and she admitted this happened and was true. You report that fact and that he denies it. It is a simple straightforward report.

Sent - August 8, 2018 at 8:43 PM - (iMessage) - Delivered

You at 255 am yesterday: "Dont worry the bracing is coming." There was no "well, depends on what he says."

Sent - August 8, 2018 at 8:58 PM - (iMessage) - Delivered

Did Miller promise you something to bury this? I dont see how someone could report on Bolling and Guilfoyle sans tapes but w him there is a god-like standard to meet.

Received - Yashar - August 8, 2018 at 9:23 PM - (iMessage)

Y

AJ, I have been threatened by everyone from Bolling, to Guilfoyle's lawyers, to the worst of the worst, The Church of Scientology. I have never backed down and never will. I have never in my career ever buried a story and never will - My reporting took down the entire miss America board - entertainment executives, I've written tough stories on people like Ari Emanuel who is arguably in the top ten most powerful men in all of media. I'm very hurt that you would think I would bury a story, this sort of story is career making. If I could report it, I would. I am continuing to work on it, but it's just not reportable yet. Re god like standard, the Bolling story had over a dozen sources, some of those sources I knew for years. The Guilfoyle story had over 20 sources, again people whom I knew for years. It also took me over 3 months to lock down the bolling story. The

Guilfoyle story I was working on for a year. I don't have 20 sources for this story, I don't even have 10.

Received - Yashar - August 8, 2018 at 9:24 PM - (iMessage)

Y

Him denying it forcefully doesn't mean the story gets shelved - it just means I need more to report it/lock it down.

Sent - August 8, 2018 at 9:25 PM - (iMessage) - Delivered

I am not saying you nefariously are sitting on it, nor for lazy reasons. But Miller is a monstrously malicious person — a criminal even — and i could see him threatening in ways that others might not.

Received - Yashar - August 8, 2018 at 9:31 PM - (iMessage)

Y

I can tell you definitively he made no threats nor did he promise anything. The biggest way for me to get pissed and dig in further is for subjects to threaten me. I would have taken to twitter at a minimum as I did with Guilfoyle two weeks ago and others in the past.

8/9/18

Sent - August 9, 2018 at 10:53 AM - (iMessage) - Delivered

I have also never, ever received written questions from a reporter in advance, be it from Atlantic, New York Times, WaPo, or anywhere. It is very very strange that this was done for him. Seems an easy way to softly have the story hit a brick wall.

Received - Yashar - August 9, 2018 at 2:32 PM - (iMessage)

Y

Sorry for the delay, you won't be able to find any reporter at a major publication that doesn't submit questions for a story like this. Lawyers require it, I'm happy to show you proof that Harvey Weinstein, Bill O'Reilly and others received written detailed questions. For example, Kimberly received them for her story, 17 detailed questions. Again, I will prove it to you. For the New York

Times investigation into bill o'reilly they were talking to his lawyer for 9 months straight. They repeatedly submitted questions over and over again.

Received - Yashar - August 9, 2018 at 2:34 PM - (iMessage)

Y

In terms of the lawyer you spoke to in many ways they are right but every publication has their standards and it's more complicated than the situation you described. I also don't have multiple corroborators so that's another issue that would make a story stronger.

Sent - August 9, 2018 at 2:36 PM - (iMessage) - Delivered

All of which is arguable but contradicts yourself and repeated assurances, inc recent ones, the report was ready and did not hinge on anything else.

Sent - August 9, 2018 at 2:41 PM - (iMessage) - Delivered

The bottom line is you are aware, and confirmed directly w the victim herself, that a top person in Trump's orbit and on national tv, who may go into WH, is a sexual predator who committed criminal acts and nearly killed a woman, and beat another. your lawyers then retroactively demand some insane std, supposedly telling you NOT to report this (simply bc you dont have her recorded), so.... you will sit on this/effectively bury it, letting a predator get away w it and also indirectly clearing the path for him to keep abusing women? Swell. Glad I was strung along for months. I still recall the reassurance it was ready to publish July 6th. Constantly moving and contradictiry goalposts to end up at "no report bc he says he's innocent." So did Weinstein.

Sent - August 9, 2018 at 3:42 PM - (iMessage) - Delivered

Also, you said this week "be prepared for a wall of shit tmrw" (article coming out) and subsequently also assured "bracing (article) is coming." You did not have a tape or plans to get it when you wrote that. Yet suddenly, after speaking to Miller, finally it was back to "no article." He killed the article

8/10/18

Sent - August 10, 2018 at 4:09 PM - (iMessage) - Delivered

Hi, need to know if you reached her friend [REDACTED] or her, so I know if to file the pleading detailing everything that has been learned on Monday morning or not. Feel free to call if easier. :) Thank you

Received - Yashar - August 10, 2018 at 4:09 PM - (iMessage)

Y

Will call you in 3 hours exactly

Received - Yashar - August 10, 2018 at 4:09 PM - (iMessage)

Y

Does that work

Sent - August 10, 2018 at 4:10 PM - (iMessage) - Delivered

A little earlier is better as Will is usually sleeping but if 7 pm est is only time I will pick up, no worries

Received - Yashar - August 10, 2018 at 4:11 PM - (iMessage)

Y

If I can get out of this meeting will absolutely do it ASAP

Sent - August 10, 2018 at 5:48 PM - (iMessage) - Delivered

Fyi, seems Miller is partying in Madrid, w out a care in the world. Pretty cocky

Received - Yashar - August 10, 2018 at 6:08 PM - (iMessage)

Y

What time does will go to sleep?

Sent - August 10, 2018 at 6:09 PM - (iMessage) - Delivered

He already is 😴

Received - Yashar - August 10, 2018 at 6:09 PM - (iMessage)

Snoozing little peanut

EXHIBIT 6

9/22/18

Sent - September 22, 2018 at 7:41 AM - (iMessage) - Delivered

Yashar, the update to the piece says that you "refused to publish a story about these false accusations". What?????

Sent - September 22, 2018 at 7:43 AM - (iMessage) - Delivered

And that you "confirmed to Mr Miller that these defamatory accusations could not be verified." Is that true? How is it possible you would say that to him? Surely they are lying. What the hell are you doing? You spoke to her. You confirmed it with her. So what the hell is this they're saying you said they were defamatory and false accusations????

Sent - September 22, 2018 at 7:47 AM - (iMessage) - Delivered

You need to issue a statement. Asap.

Sent - September 22, 2018 at 7:56 AM - (iMessage) - Delivered

The reason you told me repeatedly you couldn't write up the story you uncovered was bc you needed her on TAPE, per your editors' instructions - not that you "refused" to write it up bc none of this was verified. You spoke to her!!!! You have to correct this.

Received - Yashar - September 22, 2018 at 11:51 AM - (iMessage)

Y

I just woke up

Sent - September 22, 2018 at 12:00 PM - (iMessage) - Delivered

Katherine Krueger

Sent - September 22, 2018 at 12:04 PM - (iMessage) - Delivered

And let me know if we are still on for this afternoon! I can Uber over

Sent - September 22, 2018 at 12:05 PM - (iMessage) - Delivered

Would love to see Kathy but understand if things are busy w today's show

Sent - September 22, 2018 at 12:39 PM - (iMessage) - Delivered

Jason is tweeting saying I made it all up.

Sent - September 22, 2018 at 12:39 PM - (iMessage) - Delivered

Enough is enough.

Sent - September 22, 2018 at 12:39 PM - (iMessage) - Delivered

You need to step in on Twitter and now allow this.

Received - Yashar - September 22, 2018 at 12:49 PM - (iMessage)

Y

<https://twitter.com/yashar/status/1043542768566583296>

Received - Yashar - September 22, 2018 at 12:49 PM - (iMessage)

Y

done.

Sent - September 22, 2018 at 12:49 PM - (iMessage) - Delivered

Huh?

Sent - September 22, 2018 at 12:49 PM - (iMessage) - Delivered

That isnt saying much

Received - Yashar - September 22, 2018 at 12:50 PM - (iMessage)

Y

i just called you

Received - Yashar - September 22, 2018 at 12:50 PM - (iMessage)



Call me

Sent - September 22, 2018 at 12:50 PM - (iMessage) - Delivered

You spoke to the victim! She said this happened! Say so!!

Received - Yashar - September 22, 2018 at 12:50 PM - (iMessage)



Call me to clarify

Received - Yashar - September 22, 2018 at 12:55 PM - (iMessage)



I have to figure out a way that it doesn't look like I couldn't prove the story if that makes any sense.

Received - Yashar - September 22, 2018 at 1:04 PM - (iMessage)



<https://twitter.com/yashar/status/1043546657634353152>

Sent - September 22, 2018 at 3:29 PM - (iMessage) - Delivered

Less than an hour after I open my DM's, this comes in

Sent - September 22, 2018 at 3:29 PM - (iMessage) - Delivered

EXHIBIT 7

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
1:18-CV-24227-CMA-Altonaga**

JASON MILLER)	
)	
Plaintiff,)	
)	
vs.)	
)	
GIZMODO MEDIA GROUP, LLC and)	
KATHERINE KRUEGER,)	
)	
Defendants.)	

DEFENDANTS' TRIAL WITNESS LIST

Defendants, Gizmodo Media Group, LLC and Katherine Krueger (collectively
“Defendants”) hereby submit the following list of witnesses who Defendants expect to present
live or by deposition at trial and those witnesses they may call if the need arises:

Expect to Present:

1. Seth Adam
Vice President of Social Good
The Lead PR, LLC
c/o Deanna K. Shullman, Esq.
Shullman Fugate PLLC
2101 Vista Parkway, Suite 4006
West Palm Beach, FL 33411

2. Jennifer Bruno
Director of Product, Revenue
G/O Media Inc.
c/o Deanna K. Shullman, Esq.
Shullman Fugate PLLC
2101 Vista Parkway, Suite 4006
West Palm Beach, FL 33411

3. Aleksander Chan
Editor in Chief, Splinter
c/o Deanna K. Shullman, Esq.
Shullman Fugate PLLC


2101 Vista Parkway, Suite 4006
West Palm Beach, FL 33411

4. Arlene "A.J." Delgado
c/o Matthew Seth Sarelson, Esq.
Matthew Seth Sarelson, P.A.
600 Brickell Ave, Suite 1715
Miami, FL 33129
5. Johnathan Eiseman
Head of Audience and Social Media,
G/O Media Inc.
c/o Deanna K. Shullman, Esq.
Shullman Fugate PLLC
2101 Vista Parkway, Suite 4006
West Palm Beach, FL 33411
6. Katherine Krueger, Defendant
c/o Deanna K. Shullman, Esq.
Shullman Fugate PLLC
2101 Vista Parkway, Suite 4006
West Palm Beach, FL 33411
7. Timothy L. Marchman
Former Editor, Special Projects Desk
Gizmodo Media, LLC
c/o Deanna K. Shullman, Esq.
Shullman Fugate PLLC
2101 Vista Parkway, Suite 4006
West Palm Beach, FL 33411
8. Jason Miller, Plaintiff
c/o Shane B. Vogt and Kenneth G. Turkel
Bajo Cuva Cohen Turkel
100 N. Tampa Street, Suite 1900
Tampa, Florida 33602
9. Kelly Miller¹
c/o Shane B. Vogt and Kenneth G. Turkel
Bajo Cuva Cohen Turkel
100 N. Tampa Street, Suite 1900
Tampa, FL 33602

¹ Defendants reserve the right to present Kelly Miller by deposition should Miller fail to present her at trial, as indicated in his Witness List dated August 5, 2019.

10. Anthony B. Schram, Esq.
3003 NW Loop 410, Suite 201
San Antonio, TX 78230

Expect to Present by Deposition:²

11. Susie Banikarim
Former Editorial Director, Splinter
c/o Deanna K. Shullman, Esq.
Shullman Fugate PLLC
2101 Vista Parkway, Suite 4006
West Palm Beach, FL 33411
12. Lawrence Carnevale
c/o Teneo Strategy
325 7th Street NW, Suite 325
Washington D.C., 20004
13. Kaelan Dorr

14. Jack Mirkinson
Deputy Editor, Splinter
c/o Deanna K. Shullman, Esq.
Shullman Fugate PLLC
2101 Vista Parkway, Suite 4006
West Palm Beach, FL 33411
15. Jason Miller, Plaintiff
c/o Shane B. Vogt and Kenneth G. Turkel
Bajo Cuva Cohen Turkel
100 N. Tampa Street, Suite 1900
Tampa, Florida 33602
16. Robert Ribar
c/o Ramsey W. Dulin, Esq.
201 E. Pine Street, Suite 425
Orlando, FL 32801
OR

² This list does not include those witnesses, other than Miller, who Miller has indicated he expects to present at trial, as indicated on his Witness List dated August 5, 2019. Defendants reserve the right to present by deposition witnesses Miller has indicated he expects to present at trial should Miller fail to present that witness at trial.

[REDACTED]

May Call if Need Arises:

17. Thomas Callahan (via deposition)
Chief Financial Officer
G/O Media Inc.
c/o Deanna K. Shullman, Esq.
Shullman Fugate PLLC
2101 Vista Parkway, Suite 4006
West Palm Beach, FL 33411

18. Andrew Corman

[REDACTED]

19. Michael Ernst

[REDACTED]

20. Terri Giddens, Defendants' Expert (if Plaintiff's expert permitted to testify)
c/o Deanna K. Shullman, Esq.
Shullman Fugate PLLC
2101 Vista Parkway, Suite 4006
West Palm Beach, FL 33411

21. Vainize Lalemond

[REDACTED]

Respectfully submitted,

Deanna K. Shullman

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Elizabeth A. McNamara

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Katherine M. Bolger (admitted *pro hac vice*)
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of August, 2019, a true and correct copy of the foregoing has been served on all counsel or parties of record on the service list.

Deanna K. Shullman

Deanna K. Shullman

Florida Bar No. 514462

SERVICE LIST

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